

1 Stephen M. Doniger (SBN 179314)
2 stephen@donigerlawfirm.com
3 Scott Alan Burroughs (SBN 235718)
4 scott@donigerlawfirm.com
5 Trevor W. Barrett (SBN 287174)
6 tbarrett@donigerlawfirm.com
7 Justin M. Gomes (SBN 301793)
8 jgomes@donigerlawfirm.com
9 DONIGER / BURROUGHS
10 603 Rose Avenue
11 Venice, California 90291
12 Telephone: (310) 590-1820
13 Attorneys for Plaintiff

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TEXKHAN, INC., a California
Corporation, individually and doing
business as HYUP SUNG T.R.D.,
Plaintiff,

v.
MACKSON, INC., a New York
Corporation, individually, and d/b/a/
“DENIM-LICIOUS” and “SHE’S SO
COOL”; ROSS STORES, INC., a
California Corporation; CITI TRENDS,
INC., a Delaware Corporation; A & E
STORES, INC., a New York
Corporation, individually and d/b/a
“STRAWBERRY”; and DOES 1
through 10,

Defendants.

Case No.:

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, TEXKHAN, INC., individually and doing business as HYUP SUNG
2 T.R.D., by and through its undersigned attorneys, hereby prays to this honorable
3 Court for relief as follows:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
6 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. Plaintiff is a corporation organized and existing under the laws of the state
14 of California with its principle place of business in Los Angeles County, and is doing
15 business as HYUP SUNG T.R.D., a Korean corporation that conducts business in
16 California and Los Angeles County.

17 5. Plaintiff is informed and believes and thereon alleges that Defendant
18 MACKSON, INC., individually and doing business as “DENIM-LICIOUS” and
19 “SHE’S SO COOL” (collectively “MACKSON”) is a corporation organized and
20 existing under the laws of the state of New York, with its principal place of business
21 at 183 Madison Avenue, Suite 1416, New York, New York 10016 and is doing
22 business in and with the state of California.

23 6. Plaintiff is informed and believes and thereon alleges that Defendant ROSS
24 STORES, INC. (“ROSS”) is a corporation organized and existing under the laws of
25 the state of California, with its principal place of business located at 5130 Hacienda
26 Drive, Dublin, California 94568 and is doing business in and with the state of
27 California.

1 7. Plaintiff is informed and believes and thereon alleges that Defendant CITI
2 TRENDS, INC. (“CITI”) is a corporation organized and existing under the laws of
3 the state of Delaware, with its principal place of business located at 104 Coleman
4 Blvd., Savannah, Georgia 31408 and is doing business in and with the state of
5 California.

6 8. Plaintiff is informed and believes and thereon alleges that Defendant A & E
7 STORES, INC., individually and doing business as “STRAWBERRY” (collectively
8 “STRAWBERRY”) is a corporation organized and existing under the laws of the
9 state of New York, with its principal place of business located at 1000 Huyler Street,
10 Teterboro, New Jersey 07608 and is doing business in and with the state of
11 California.

12 9. Defendants DOES 1 through 10, inclusive, are other parties not yet
13 identified who have infringed Plaintiff’s copyrights, have contributed to the
14 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
15 wrongful practices alleged herein. The true names, whether corporate, individual or
16 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
17 which therefore sues said Defendants by such fictitious names, and will seek leave to
18 amend this Complaint to show their true names and capacities when same have been
19 ascertained.

20 10. Plaintiff is informed and believes and thereon alleges that at all times
21 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
22 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
23 at all times acting within the scope of such agency, affiliation, alter-ego relationship
24 and/or employment; and actively participated in or subsequently ratified and
25 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
26 all the facts and circumstances, including, but not limited to, full knowledge of each

1 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
2 caused thereby.

3 **CLAIMS RELATED TO DESIGN HA-1465**

4 11. Prior to the conduct complained of herein, Plaintiff composed an original
5 two-dimensional artwork for purposes of textile printing, which is set forth
6 hereinbelow. It allocated this artwork Plaintiff's internal design number HA-1465
7 (hereinafter the "Subject Design"). This artwork was a creation of Plaintiff and/or
8 Plaintiff's design team, and is, and at all relevant times was, owned exclusively by
9 Plaintiff.

10 12. Plaintiff applied for and received a United States Copyright Registration
11 for the Subject Design.

12 13. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
13 bearing Subject Design to numerous parties in the fashion and apparel industries.

14 14. Plaintiff is informed and believes and thereon alleges that, without
15 Plaintiff's authorization, the above-named Defendants, and certain DOE defendants
16 created, sold, manufactured, caused to be manufactured, imported and/or distributed
17 fabric and/or garments comprised of fabric featuring designs which are identical to
18 or substantially similar to the Subject Design (hereinafter "Infringing Garments").
19 Such Infringing Garments include, but are not limited to:

20 a.) garments sold by ROSS under Style No. D1265 C3034. Such garments
21 bore the "Denim-Licious" label and identifying information indicating
22 said garments were manufactured and/or supplied by MACKSON.

23 Below is a comparison of the Subject Design and one exemplar one such
24 Infringing Garment:

25
26
27 ///

1	Subject Design	Example Infringing Garment
2 3 4 5 6 7 8 9 10 11 12		 Detail
13 14 15 16 17 18 19 20 21 22 23		 Garment

b.) garments sold by CITI, STRAWBERRY, and Joyce Leslie under Style or SKU No. NF-70. Such garments bore the “Denim-Licious” label and identifying information indicating said garments were manufactured

1 and/or supplied by MACKSON. Below is a comparison of the Subject
2 Design and one exemplar one such Infringing Garment:

3 Subject Design	4 Example Infringing Garment
5 	6  7 Detail 8  9 Garment 10 11 12 13 14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15



16 c.) garments sold by Body Central under Style or SKU No. 7000. Such garments
17 bore the “SHE’S SO COOL” label and identifying information indicating said
18 garments were manufactured and/or supplied by MACKSON. Below is a
19 comparison of the Subject Design and one exemplar one such Infringing
20 Garment:

21 Subject Design	Example Infringing Garment 22 Detail
-------------------	---

23
24
25
26
27
28



Garment



15. The above comparisons make apparent that the elements, composition,
22 colors, arrangement, layout, and appearance of the designs at issue are substantially
23 similar.
24

16. Plaintiff is informed and believes and thereon alleges that Defendants, and
25 each of them, have committed copyright infringement with actual or constructive
26 knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such
27

1 that said acts of copyright infringement were, and continue to be, willful, intentional
2 and malicious, subjecting Defendants, and each of them, to liability for statutory
3 damages under Section 504(c)(2) of the Copyright Act in the sum of up to one
4 hundred fifty thousand dollars (\$150,000) per infringement.

5 **FIRST CLAIM FOR RELIEF**

6 (For Copyright Infringement – Against All Defendants, and Each)

7 17. Plaintiff repeats, realleges, and incorporates herein by reference as though
8 fully set forth, the allegations contained in the preceding paragraphs of this
9 Complaint.

10 18. Plaintiff is informed and believes and thereon alleges that Defendants, and
11 each of them, had access to Subject Design, including, without limitation, through
12 (a) access to Plaintiff's showroom and/or design library; (b) access to illegally
13 distributed copies of the Subject Design by third-party vendors and/or DOE
14 Defendants, including without limitation international and/or overseas converters
15 and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments
16 manufactured and sold to the public bearing fabric lawfully printed with the Subject
17 Design by Plaintiff for its customers.

18 19. Plaintiff is informed and believes and thereon alleges that one or more of
19 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
20 further informed and believes and thereon alleges that said Defendant(s) has an
21 ongoing business relationship with Defendant retailers, and each of them, and
22 supplied garments to said retailer, which garments infringed the Subject Design in
23 that said garments were composed of fabric which featured unauthorized print
24 design(s) that were identical or substantially similar to the Subject Design, or were
25 an illegal derivation or modification thereof.

26 27. Plaintiff is informed and believes and thereon alleges that Defendants, and
27 each of them, infringed Plaintiff's copyright by creating, making, and/or developing

1 directly infringing and/or derivative works from the Subject Design and by
2 producing, distributing and/or selling garments which infringe the Subject Design
3 through a nationwide network of retail stores, catalogues, and through on-line
4 websites.

5 21. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
6 damages to its business in an amount to be established at trial.

7 22. Due to Defendants' acts of infringement, Plaintiff has suffered general and
8 special damages in an amount to be established at trial.

9 23. Due to Defendants' acts of copyright infringement as alleged herein,
10 Defendants, and each of them, have obtained direct and indirect profits they would
11 not otherwise have realized but for their infringement of the Subject Design. As
12 such, Plaintiff is entitled to disgorgement of Defendants' profits directly and
13 indirectly attributable to Defendants' infringement of the Subject Design in an
14 amount to be established at trial.

15 24. Plaintiff is informed and believes and thereon alleges that Defendants, and
16 each of them, have committed acts of copyright infringement, as alleged above,
17 which were willful, intentional and malicious, which further subjects Defendants,
18 and each of them, to liability for statutory damages under Section 504(c)(2) of the
19 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
20 infringement. Within the time permitted by law, Plaintiff will make its election
21 between actual damages and statutory damages.

22 **SECOND CLAIM FOR RELIEF**

23 (For Vicarious and/or Contributory Copyright Infringement - Against All
24 Defendants)

25 25. Plaintiff repeats, realleges, and incorporates herein by reference as though
26 fully set forth, the allegations contained in the preceding paragraphs of this
27 Complaint.

1 26. Plaintiff is informed and believes and thereon alleges that Defendants
2 knowingly induced, participated in, aided and abetted in and profited from the illegal
3 reproduction and/or subsequent sales of garments featuring the Subject Design as
4 alleged herein.

5 27. Plaintiff is informed and believes and thereon alleges that Defendants, and
6 each of them, are vicariously liable for the infringement alleged herein because they
7 had the right and ability to supervise the infringing conduct and because they had a
8 direct financial interest in the infringing conduct.

9 28. By reason of the Defendants', and each of their, acts of contributory and
10 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
11 suffer substantial damages to its business in an amount to be established at trial, as
12 well as additional general and special damages in an amount to be established at
13 trial.

14 29. Due to Defendants', and each of their, acts of copyright infringement as
15 alleged herein, Defendants, and each of them, have obtained direct and indirect
16 profits they would not otherwise have realized but for their infringement of the
17 Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
18 directly and indirectly attributable to Defendants' infringement of the Subject
19 Design, in an amount to be established at trial.

20 Plaintiff is informed and believes and thereon alleges that Defendants, and
21 each of them, have committed acts of copyright infringement, as alleged above,
22 which were willful, intentional and malicious, which further subjects Defendants,
23 and each of them, to liability for statutory damages under Section 504(c)(2) of the
24 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
25 infringement. Within the time permitted by law, Plaintiff will make its election
26 between actual damages and statutory damages.

PRAYER FOR RELIEF

1 Wherefore, Plaintiff prays for judgment as follows:

2 **Against All Defendants**

3 31. **With Respect to Each Claim for Relief**

4 a. That Defendants, each of them, and their agents and employees be
5 enjoined from infringing Plaintiff's copyrights in any manner,
6 specifically those for the Subject Design;

7 b. That Defendants, and each of them, account to Plaintiff for their profits
8 and any damages sustained by Plaintiff arising from the foregoing acts
9 of infringement, the exact sum to be proven at the time of trial, or, if
10 elected before final judgment, statutory damages as available under the
11 Copyright Act, 17 U.S.C. § 101 et seq.;

12 c. That Plaintiff be awarded its attorneys' fees as available under the
13 Copyright Act U.S.C. § 101 et seq.;

14 d. That Plaintiff be awarded pre-judgment interest as allowed by law;

15 e. That Plaintiff be awarded the costs of this action; and

16 f. That Plaintiff be awarded such further legal and equitable relief as the
17 Court deems proper.

18 ///

1 A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
2 CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

3 Respectfully submitted,

4
5 Dated: January 27, 2016

By: /s/ Scott Alan Burroughs
6 Scott Alan Burroughs, Esq.
7 Trevor W. Barrett, Esq.
8 Justin M. Gomes, Esq.
9 DONIGER / BURROUGHS
10 Attorneys for Plaintiff

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28